IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6127 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JITESHKUMAR V CHOTAI
Versus
DISTRICT JUDGE AND ANOTHER

==========

Appearance :
MR AJ YAGNIK for Petitioner.
LAW OFFICER BRANCH for Respondents.
MR JB PARDIWALA for Respondents.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 08/09/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the order by this High Court in Departmental Appeal, dated 31-1-1990, which is at Annexure-J. By the impugned order, the appeal of the petitioner is partly allowed by substituting the penalty awarded by disciplinary authority

and the same is reduced to stoppage of one increment without future effect.

The petitioner, who is working as an English Stenographer, Grade-II, under respondent No.1 was subjected to departmental proceedings in view of the complaint received by disciplinary authority from one Shri N.K.Bhatt, who was serving as a peon in the establishment of District Court at Rajkot.

As per the statement of imputation of charge, it is alleged that on 10-7-1984, the petitioner met Shri N.K.Bhatt, Peon of the District Court in connection with duplicating work. The petitioner informed said Shri N.K.Bhatt to have the duplication work done, which he had brought from his office but Shri Bhatt informed the petitioner that he was busy with other work and asked the petitioner to send some other incumbent of his Court for said duplicating work. On this the petitioner got excited and used abusive language for which said Shri Bhatt gave an application to the District Judge on 10-7-1984. Accordingly, departmental inquiry was initiated against the petitioner on the charge of having mis-behaved while on duty. The disciplinary authority, i.e., District Judge came to the conclusion that the charges are proved and ultimately, imposed a penalty of withholding of five increments with cumulative effect.

Being aggrieved by the said order of penalty, the petitioner preferred appeal on the administrative side of the High Court. The petitioner was heard in person in that appeal. In appeal, it was found that the fact of using abusive language by the petitioner towards said peon remains established. It was also found that whatever is stated by said Peon by filing complaint, which was filed immediately after the occurrence of the incident, is proved and the petitioner has abused said

peon. Subsequent improvement in the original incident, as stated by witness, Dolatsinh Chauhan,by which some more filthy language alleged to have been used by the petitioner was found to have been not established. Accordingly, second part of the incident alleged against the petitioner by which some more words were added in the mouth of the petitioner is not proved. However, the appellate authority found that the charge of abusing peon, for which immediately complaint is filed, is established. The appellate authority found that use of abusive language cannot be condoned, therefore, for said misconduct regarding use of abusive language, the appellate authority awarded penalty of stoppage of one increment without future effect by allowing appeal partly.

Mr.Yagnik, learned advocate for the petitioner (delinquent) submitted that the petitioner had gone to said peon in connection with official work of getting number of copies of the judgement given by the Small Cause Court Judge with the help of litho machine. Accordingly, for getting stencil copies of the judgement, the petitioner had gone to District Court, Rajkot from Small Cause Court, where litho machine was located, and there he met said peon, who was doing litho machine work. It is argued by Mr.Yagnik that the petitioner was not having good terms with said peon, Shri N.K.Bhatt as the delinquent had not obliged said peon in connection with transfer of residential quarter and accordingly, their relations were strained. It is submitted that, therefore, said peon has exaggerated the version and the petitioner had not committed any misconduct. He also submitted that initially when the complaint was filed by said peon, he narrated the incident and stated that he was abused by the petitioner, however, no particulars were given about such abusive language used by the petitioner. According to him, subsequently there is an improvement in the version by which filthy were added in the mouth of the petitioner. He also submitted that at the

relevant time, when inquiry was going on, the petitioner had asked for one short adjournment but he was not given an adjournment and inquiry was proceeded in his absence and as a result of that, the petitioner could not point out his case properly before the inquiry officer. He further submitted that the inquiry was initiated for imposing major penalty and as per the procedure prescribed under the Rules, presiding officer was required to be appointed, which was not done in this case, therefore, whole departmental inquiry is vitiated.

On the other hand, Mr.Pardiwala, learned advocate for the respondents submitted that penalty, which is awarded to the petitioner is minor penalty of withholding one increment without future effect. It is submitted that fact that petitioner has used abusive language towards the peon is proved by evidence on record and, therefore, finding of fact arrived at by the disciplinary authority, which is confirmed by the appellate authority, may not be interfered with by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India. It is submitted by Mr.Pardiwala that this Court cannot re-appreciate the evidence in a petition under Article 226 of the Constitution of India or cannot substitute its own decision, which is taken by the appellate authority. Mr.Pardiwala has relied upon various judgements of the Supreme Court in support of his say.

I have heard both the learned advocates and I have also gone through the petition and annexures annexed with the petition. It is required to be noted that even though the proceedings were initiated against the petitioner for imposing major penalty, ultimately, the punishment which is given to the petitioner is minor penalty, i.e., withholding of one increment. So far as nature of penalties described under Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules

1971, is concerned, penalty of withholding of one increment is treated as a minor penalty under this Rule.

Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules 1971, provides as under :

"**6. Nature of Penalties** :-

Without prejudice to the provision of any law for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any Member of the State, Subordinate or + (Inferior Service) namely.

Minor Penalties

(1) Censure

(2) Withholding of increments or promotion.

(3) Recovery from his pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

(4) Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increment of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the further increments of pay.

(5) Reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post or service from which the Government servant

was reduced and his seniority and pay on such restoration to that grade, post or service.

(6) Compulsory retirement.

(7) Removal from service which shall not be a disqualification for future employment under Government.

(8) Dismissal from Service Which shall ordinarily be a disqualification for future employment under Government."

Under Rule 9 procedure for imposing major penalty is prescribed by which inquiry officer is required to be appointed and procedure prescribed thereunder is required to be followed.

In the instant case, so far as ultimate penalty is concerned, the same is in connection with withholding of one increment, which is treated as minor penalty under Rule-6. In the case of **B.R.Acharya V. State of Guajrat And Another**, reported in **1985 (2) GLR 685**, this Court has held that the penalty of withholding of increments falls under Rule 6 (2) and is a minor penalty, and an inquiry prescribed under Rule 9 need not be held.

In the instant case, in inquiry various witnesses were examined. Thereafter, inquiry officer submitted his report and, thereafter, disciplinary authority awarded punishment of withholding five increments with future effect, which was reduced by the appellate authority and a liberal view is taken in appeal by imposing penalty of withholding of one increment without future effect. As stated above, a case in which minor penalty is imposed it was not required to hold even full-fledged inquiry as against that statement of witnesses were recorded in the present case. In appeal also, after considering the evidence on record, it is found that the petitioner has used abusive language to the

peon, however, subsequent incident by which it is alleged that the petitioner has used filthy language is not held to be proved. Said finding of fact arrived at by the appellate authority about petitioner using abusive language cannot be said to be contrary to evidence in any way or perverse and simply because the petitioner might have gone in connection with official work, he has no right to abuse employee of the establishment. The petitioner could have made a grievance to the District Judge if the peon has refused to do the work, but surely, he could not abuse him. Therefore, the said charge is proved and when the appellate authority has reduced the punishment by awarding punishment only withholding of one increment without future effect, in my view, this order is not required to be interfered with by this Court.

It is required to be noted that when the petitioner was heard in person while awarding final penalty, argument of Mr.Yagnik, learned advocate for the petitioner that petitioner was not given reasonable opportunity to defend himself cannot be accepted. Since ultimately minor penalty is awarded, it was not even necessary to hold detailed inquiry as contemplated by Rule 9 (2). In any case, no prejudice is caused to the petitioner as he was given ample opportunity to defend himself.

Argument of Mr.Yagnik that at the relevant time, the petitioner was sick and an adjournment was sought, which was not granted and, therefore, order of the inquiry officer is required to be set aside, is not acceptable because it was not necessary to hold full-fledged inquiry for imposing minor penalty.

While passing its order, the authority has also considered the statements of witnesses for defence, and, thereafter the authority has

agreed with the report of the inquiry officer, therefore, it cannot be said that the petitioner was not given reasonable opportunity to defend himself.

Considering the order of the appellate authority as well as considering the fact that the charge regarding abusing the peon of the District Court is found to have been established as per the evidence on record, in my view, said finding of fact is not required to be interfered with by this Court.

Therefore, I do not find any substance in this petition, hence, this petition is dismissed. Rule is discharged with no order as to costs.

(P.B.Majmudar, J.)

/malek